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No. 337

In The

SUPREME COURT OF THE UNITED STATES

THE GREENHILLS HOME OWNERS CORPORATION, a corporation,
Petitioner,

v.

THE VILLAGE OF GREENHILLS, OHIO, an Ohio Municipal Corporation, et al.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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This brief, in opposition to a petition for a writ of certiorari, is filed jointly by the Village of Greenhills and by property owners who intervened on behalf of themselves and other property owners similarly situated.

QUESTION PRESENTED

Whether or not the record in this case presents a constitutional question for review?

STATEMENT

The statement of facts on pages 5 to 19 of the Petition for Writ of Certiorari is generally correct; however, it omits certain important portions of the record to which reference is made in the argument herein.

The unique facts of this case indicate that this is not a case of general importance to Federal or Constitutional law.

ARGUMENT

WHETHER OR NOT THE RECORD IN THIS CASE PRESENTS A CONSTITUTIONAL QUESTION FOR REVIEW?

It is a well established principle that where the case was disposed of in the State court before the federal question was reached, and its decision was based on other grounds, the Federal Supreme Court has no jurisdiction to review the case. *Keene* v. *Clark,* 10 Pet. 291, 9 L. Ed. 429 (1836); *Crowell* v. *Randell,* 10 Pet. 368, 9 L. Ed. 458 (1836); *Jankovich* v. *Indiana Toll Road Commission,* 379 U.S. 487, 85 S. Ct. 493, 12 L. Ed. 2d 305 (1965); *Holley* v. *Lawrence,* 317 U.S. 518, 63 S.Ct. 394, 87 L. Ed. 434 (1943); *Bolling* v. *Lersner,* 91 U.S. 594, 23 L. Ed. 366 (1876); *Chouteau* v. *Gibson,* 111 U.S. 200, 4 S. Ct. 340, 28 L. Ed. 400 (1884).

Petitioner relies upon 28 U.S.C. 1257 (3) which authorizes the United States Supreme Court to review a decision of a state supreme court by writ of certiorari, "where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed * * *."

Mr. Justice Story wrote in *Crowell* v. *Randell,* 10 Pet. 368, 392, 9 L. Ed. 458, 467 (1836):

> "In the interpretation of this section of the Act of 1789, it has been uniformly held that to give this court appellate jurisdiction, two things should have occurred and be apparent in the record: First, that some

one of the questions stated in the section did arise in the court below; and second, that a decision was actually made thereon by the same court, in the manner required by the section. If both of these do not appear on the record, the appellate jurisdiction fails. * * *"

The Supreme Court of Ohio stated the law of this case in the syllabus written by the Court:

"A Court will not exercise its power to determine the constitutionality of a legislative enactment where other issues are apparent in the record, the determination of which will dispose of the case on its merits." *Greenhills Home Owers Corporation* v. *Village of Greenhills, et al.*, 5 Ohio St. (2d) 207, 34 Ohio Op. (2d) 420 (1966).

The Supreme Court of Ohio in the body of its Opinion observed:

"The first rule controlling these cases is that a court will not exercise its power to determine the constitutionality of a legislative enactment unless it is absolutely necessary to do so. *State ex rel. Lieux* v. *Village of Westlake,* 154 Ohio St. 412, 43 Ohio Op. 343, 96 N.E. (2d) 414 (1951).

"And such necessity is absent where other issues are apparent on the record which will dispose of the case on its merits. *Crowell, Commr.* v. *Benson,* 285 U.S. 22, 76 L. Ed. 598, 52 S. Ct. 285 (1932).

"These precepts were ignored by the Court of Appeals in declaring the ordinance unconstitutional solely on the basis of *Morris County Land Investment Co.* v. *Township of Parsippany-Troy Hills,* 40 N.J. 539, 193 A. 2d 232 (1963). The restriction declared invalid in that case was an amendment to an existing comprehensive zoning plan, which further limited a single area to water-life and flood control purposes without any participation or consent to its enactment by the

owner of the land affected. Furthermore, a comparison of that situation with the limitations of Greenbelt in this case, is as unrealistic as it is premature. Similar limitation is inherent in every ordinance or zoning regulation which requires 'open space' on all building lots. Such required 'open space' is perpetually 'used' to preserve maximum density of the active uses of land to prevent overcrowding and to minimize health and safety hazards. In these cases, the 'open space' is located in one area. Therefore, it is no more correct to hold that Greenbelt is not 'in use' than to hold that 'open space,' in the form of 'set-backs' and minimum yard requirements, is not 'in use.'

"The ordinance here may well violate the constitutional rights of GHOC quite apart from the reasoning of the Court of Appeals. Conversely, it may be constitutional in spite of the rule of *Morris County Land Investment Co.*

"But the enduring value of the rule restraining precipitous constitutional determinations is well illustrated by these cases. The decision of the Common Pleas Court would tend to overemphasize zoning as an element of the law of real property. On the other hand, the decisions of the Court of Appeals might well cast premature doubt on the validity of so-called 'development plans' now prevalent in zoning practice."

After the Court followed the general rule of avoiding constitutional issues where a case can be decided on other grounds, the Court announced these other grounds:

"Therefore, the second rule of law which we adopt as applicable here and from whose strictures GHOC has clearly failed to remove itself is tautly drawn in *Board of Levy Commissioners* v. *Johnson,* 178 Ky. 287, 199 S.W. 8 (1917), to the effect that where there is clear evidence that a party seeking to assail a regulation as unconstitutional 'aided in procuring the legislation

> and derived benefit therefrom and that to set it aside would work a hardship or injustice on others who were misled to their prejudice into believing that the legislation was valid,' estoppel will deny any right to pursue the attack on validity."

This rule had been announced earlier by the Kentucky Court of Appeals in the interesting case of *Ferguson* v. *Landran,* 1 Bush 548, 64 Ky. 548 (1866), and had been followed in earlier cases decided by the Supreme Court of Ohio. *Mott* v. *Hubbard, Treas.,* 59 Ohio St. 199, 53 N.E. 47 (1898); *City of Mount Vernon* v. *State, ex rel. Berry,* 71 Ohio St. 428, 73 N.E. 515 (1905).

The Petitioner devotes most of its argument to an assertion that the Supreme Court of Ohio fabricated facts in order to apply the rule of *Board of Levy Commissioners* v. *Johnson* and that there are no facts in the record to support the propositions that the petitioner advocated and assisted in the passage of the ordinance and that the petitioner benefited from the ordinance. The Supreme Court of Ohio made reference to these assertions on the part of GHOC in its opinion:

> "The Village and the interveners contend that GHOC's promotion of the ordinance containing the Greenbelt restrictions was pursuant to the insistence of the United States that zoning appropriate to its original conception as a 'Greenbelt' town be adopted prior to any sale. Thus, it is claimed that GHOC was, if not the agent of the United States, the principal actor in an endeavor which was a sine qua non to GHOC's qualification as the purchaser. Alternatively, Appellants claim that the promotion of the ordinance was designed to strike $100,000 from the purchase price. GHOC, of course, emphatically denies both contentions and pleads that its participation in securing the ordinance was simply for the purpose

> of advancing the general welfare of the community. In our view, the truth or falsity of these claims, to which a major portion of the six weeks trial was devoted, is immaterial. Equally immaterial is whether the United States even knew of GHOC's participation in seeking the zoning ordinance, although the trial court found that it did.
>
> "The critical facts were never in dispute. GHOC did actively promote, as hereinbefore indicated, a comprehensive zoning ordinance over the course of a year and a half. During all this time GHOC was the potential purchaser of substantially every square foot of land subject to that ordinance. GHOC did, in fact, purchase that land. And GHOC thereby became the beneficiary of every good (neither the greatest nor the least of which was a reduction in the purchase price) and the endurer of every evil, if any, flowing from that ordinance."

Petitioner claims that the Supreme Court arrived at this conclusion in "utter disregard of undisputed facts," (Petition, p. 43) In support of this strong assertion the petitioner makes reference to portions of the record but carefully avoids directing this Court's attention to evidence in the record which makes the above conclusion of the Supreme Court of Ohio unassailable.

Greenhills was one of three model communities, surrounded by greenbelts, built by United States Government during the thirties. Prior to disposing of Greenhills after World War II, the Federal Government sought a way to preserve the design and plan of Greenhills. On June 13, 1947 the United States, through the Public Housing Administration, entered into a contract with Justin Hartzog, a City Planning Engineer, to prepare plans and recommendations in connection with the disposition of the property embraced within the village, including a program con-

taining recommendations as to land use, ground development, and a zone district map. Hartzog prepared and submitted the plan, including the recommended districts for the use of the property by comprehensive zoning law. This included the restriction of the use of the land in the greenbelt district of the village to:

a. Public park reservation, and playground.
b. Public recreational buildings.
c. Allotment gardens, farm, nursery, gardens.
d. Public utilities.
e. Bus passenger station.
f. Signs erected by public authority for an educational or directional nature for the welfare and convenience of the public.

On November 20, 1947, Lawrence Tucker as Director of Service of Greenhills (an employee of the United States) wrote Mr. Hartzog advising of a resolution of the village council authorizing him to prepare the zoning ordinance in accordance with the map of zoning district prepared by him (Ex. 62, R 919, 920). The plan including the zoning map and zoning ordinance submitted has been known thereafter as "the Hartzog Plan." (R 347, 348).

The plaintiff had full knowledge of all details leading up to the adoption of this ordinance. In fact, three members of the Planning Commission who studied the draft of the zoning ordinance as prepared by Hartzog and held public hearings on it, were also members of the Board of Directors of the Petitioner before and at the time of the adoption of the ordinance; namely, Carl Pfirrmann (R 294-304), J. J. Kushmann (R 199, 200), and George Geisen (R 431-434). Mr. Pfirrmann was also Assistant Secretary of the Petitioner (R 101, 104, Russell; R 303-307, Pfirrmann). Two members of the Board of Directors of the Petitioner, while the Hartzog plan was

being considered, were members of the Village Council of Greenhills; namely, Geisen and Dolle (R 430, 434, Geisen; R 642, Russell).

Russell, the President of the Petitioner, knew that Hartzog had drafted the ordinance for some time before it was actually adopted (R 47). Russell actually urged the adoption of the ordinance as early as Aungust 11, 1948, a year before its adoption (Defts. Ex. 35, R 975). Furthermore, Russell knew that the Hartzog Plan included the Greenbelt (R 193-196, 198, 212, 214, 216). Not only did the officers and representatives know of the existence of the proposed ordinance and provisions of the Greenbelt portion of the ordinance (Article VI), but they had actually discussed the validity of Article VI among themselves and were advised by Mr. Taft that the provision "wasn't worth the paper it was written on" (R 55, 56, 57 Russell). But this was never mentioned to anyone except the officers and directors of the Petitioner (R 57, Russell).

The minutes of the village council disclose that as early as August 5, 1948 there was a meeting at which the Village Planning Commission was appointed and that at this meeting Mr. Stamm appeared as a representative of Petitioner and suggested that Council immediately adopt the Hartzog Plan (Defts. Ex. 73, R 928).

Mr. Russell's deposition had been taken before trial. At the trial he was called as upon cross-examination and admitted the following questions and answers given by him in the deposition (R 214 thru 218):

> "Q And in your capacity as president of this corporation, you urged the adoption of the zoning ordinance by the Village, did you not?
>
> "A Yes, sir.
>
> "Q 'Do you recall of any position which this plaintiff corporation took, other than that?' And your

answer was: 'No, sir;' is that correct? Just answer that yes or no. Was that your answer? * * *

"A That's right. * * *" (R 214, Russell)

"Q 'Who were the representatives of this plaintiff corporation that appeared before the Planning Commission and the Village Council when the question of the adoption of the zoning ordinance was under consideration by those two bodies? * * *

"A 'I don't know as we designated any particular person. One thing you would have to bear in mind, that the Village apparently was going to be sold, and I know we as the members of the corporation or as individuals living in the community were vitally interested in what was going to happen to our community, but not necessarily as an officer of the corporation, because in our capacity of trying to develop a program to purchase this thing, we did uncover or discover what was happening to many other communities that had been sold, — that the zoning ordinance had never been prepared, and other conditions that made the community almost unlivable, as we would like to see it exist, and as a consequence we took advantage of that information to urge the Village of Greenhills to avoid the same pitfalls.

" 'So, we, as a corporation asked them to do it, and many of our corporate officers or representatives could have urged the same thing, mainly because they knew what had happened before and we were confident the people running the Village at that time did not have that information available to them.' * * *

"Q 'Well, regardless of the interest which your officers or stockholders may have individually had, the corporation, it is true, as you previously indicated, I understand, had an interest in the adoption of the zoning ordinance at least as early as August 11, 1948, when this letter was written by you on behalf of the corporation, and continued its interest up until the adoption of the zoning ordinance? * * *'

"A 'Yes.' * * *

"Q 'You were aware, that is when I say you, as president of the corporation, of the proposal that had been made with reference to the restriction of the Greenbelt to the purposes named in the ordinance' * * *

"A 'I certainly should have been. I presume I was.' * * *

"Q 'Then as I understand from what you said, especially in the early part of your answer, the real interest in the zoning ordinance was that which was shown by this corporation?' * * *

"A 'We urged its adoption, the format of it, we had no legal power or no interest in it other than encouraging it to be done, that's right.' * * *

"Q 'Well, of course, your interest was also beyond that, was it not, in that an ordinance would be adopted which would be one that your corporation could work under if you acquired the property; that being your ultimate objective?' * * *

"A 'That was certainly the case, but the terms of the ordinance and the amount of Greenbelt and so forth, I must have known about it, but I don't recall, I am sure I did.' * * *

"Q 'However, you were aware, of course, at that time of the proposed restriction of Greenbelt as ultimately adopted in the ordinance?' * * *

"A 'Yes.' * * *

"Q 'You were then the president of this corporation, were you not?' * * *

"A 'Yes, sir.' * * *

"Q 'What if anything did you do in the way of making any views which you may have had with reference to those restrictions known to the Village Council at that time, before the ordinance was adopted?' * * *

"A 'I frankly don't recall whether we made any objections or not.' * * *

"Q 'Well, whether or not you caused anybody else or requested anybody else on behalf of the corporation to make any objection, is that correct?' * * *

"A That's right."

Not only is the record clear that the Petitioner promoted the passage of the Hartzog Plan as the zoning ordinance for the Village of Greenhills, but the Petitioner in its dealings with the Congress of the United States and the Public Housing Administration repeatedly represented its acceptance of the burden to maintain the Greenbelt for the restricted purposes set forth in the Hartzog Plan. This is demonstrated by abundant evidence in the record.

Defendants' Exhibit No. 80 is a transcript of proceedings before the Senate Committee on Banking and Currency with regard to "Sale of Greentown Suburban Resettlement Projects." During the course of these hearings Mr. Stamm, a Director and Officer of the Petitioner Corporation testified that:

> "There is an over-all master plan for this entire area by town planning."

Mr. Stamm was asked by Senator Douglas:

> "And will the purchasers be required to conform?"

To this, Mr. Stamm replied:

> "They will be required to conform to the general provisions of the plan." (R 945)

Also in Defendant's Exhibit No. 80, Mr. Taft, as counsel for the Petitioner, testified:

> "* * * the *only possible profit* that can ultimately come to our company is from some development of the *commercial* property." (R 959)

In addition, Mr. Taft wrote Senator Douglas a letter on April 4, 1949 in which he outlined the nature of the corporation and stated.

"In addition to that we will adopt the following amendment:

"'When the two classes of preferred shares shall have been redeemed, and when in the judgment of the Board of Directors the general purposes of the Greenbelt development at Greenhills have been accomplished and the corporation ought to be liquidated, if the assets of the corporation are more than $100 per common share outstanding, the Board of Directors shall create a non-profit corporation, whose general purpose shall be the civic development of Greenhills, including such possible projects as the improvement of the schools, scholarships, support of a library, and aid for civic memorials; the Board shall then convey to such non-profit corporation all assets of the corporation in excess of $100 per common share outstanding, plus the necessary taxes and expenses of litigation, including any taxes on the transaction payable by the common shareholder; and the Board of Directors and common shareholders shall then proceed to liquidate the corporation.'" (Appendix A, pp. 22-25)

These statements made on behalf of the Petitioner to the Senate Committee are extremely important when considered in the light of the fact that at the time of the hearing (March 24, 1949) the zoning ordinance had been prepared by Hartzog and submitted to the Planning Commission of Greenhills and the officers of the Petitioner were urging its adoption. (Defendant's Exhibits 63, 65, 67, 73, 74, R 921-931)

Mr. Russell, President of the Petitioner, testified before the Committee on Banking & Currency of the United States House of Representatives:

"We intend, for the protection of our homes, to stick to *our* Hartzog Plan, whether the Government does or not." (Defendant's Exh. 52, R 913)

In the petitioner's proposal to the Public Housing Administration transmitted by letter from Mr. Taft to John Taylor Egan, Commissioner of Public Housing Administration, on June 15, 1949, the Petitioner represented as follows:

> "In consideration of the acceptance by the United States of these terms, Greenhills Home Owners Corporation agrees * * * (2) to operate the existing project, and to develop the rest of the property for low cost homes in a manner as close to the Hartzog Plan as possible, and in any event along lines consistent with good garden city planning. * * *" (Deft's. Ex. 81, R 1033)

Mr. Taft, as counsel for the Petitioner, represented in a letter dated on March 15, 1949 to a Greenhills citizens group that Petitioner would follow the Hartzog Plan if the Federal Government were to sell the Village of Greenhills to Petitioner. (Deft's. Ex. 130, R 1013)

In order to comply with Public Law 65 which authorized the sale of the three Greenbelt towns to non-profit corporations and thereby bolster the representations made by the Petitioner that it would follow the Hartzog Plan, the Petitioner changed its Articles of Incorporation from that of a corporation for profit to a non-profit corporation. John Taylor Egan, Commissioner of the Public Housing Administration testified that he was induced to enter into the contract with the Petitioner by the fact that it was a non-profit corporation and that he would not have entered into the contract with the Petitioner nor conveyed the property to the Petitioner if he had known it was going to revert back to a profit corporation after the Deed was delivered, (R 385-389) and he also testified that the Petitioner definitely did not pay the full value of the

property because certain properties have been dedicated to public use either by deed or by zoning "and through negotiation I think we arrived at what deduction should be made of the cost of these areas in the final appraiser's price, or the sale price." (R 387) Egan further testified that at no time during the course of negotiations with Petitioner did they indicate that the Greenbelt area would ever be developed for private profit (R 387) and that "we had every guarantee from that corporation that they would maintain it as it originally was conceived." (R 388).

Mr. Grove, Counsel for the Public Housing Administration, was asked why the Greenbelt District of Greenhills had not either been conveyed to the Village before the sale or a provision placed in the deed to restrict the use. Mr. Grove answered:

> "Because it was our understanding that the zoning ordinance covered fully the intent of the parties. And it was acquiesced in in every discussion of the matter with Mr. Taft or anybody else, they raised no question of the zoning, and their desire to maintain the municipality as planned and contemplated originally." (R 366)

Mr. Grove further testified that in arriving at the purchase price which was substantially lower than the Government's appraisal, consideration had been given to the manner in which the property would be developed in the future (R 367, 368).

The prospectus wherein the Public Housing Administration invited bids for the purchase of the Village of Greenhills specifies that the purchaser "shall conform to use restrictions embodied in the zoning ordinance to be adopted by the Village of Greenhills." (R 984)

The Petitioner was compensated for the restricted use of the Greenbelt property. The Commissioner of Public

Housing had the property appraised by the Fred'k. Schmidt Company of Cincinnati. The pertinent parts of the appraisal are found in the record in Defendant's Exhibit 28, R 996; Defendant's Exhibit 78-B, R 1000; Defendant's Exhibit 78-C, R 1002; Defendant's Exhibit 78-E, R 1004). Defendant's Exhibit 28 establishes the total amount of the appraisal at $5,669,700 retail, and $4,252,275 wholesale (R 997). The property which was sold consisted of five general categories:

1. 676 dwelling units constructed by the United States Government which individuals, mostly tenants, had contracted to buy from Petitioner after the Government conveyed title to the Petitioner;

2. Commercial property occupied by business tenants;

3. Land for future improvement with streets and utilities installed.

4. Raw land for future residential and commercial development;

5. The Greenbelt which was limited by Article VI of the Zoning Ordinance to public use.

Petitioner made its own separate appraisal of the properties conveyed to it and this was as follows (R 593):

Commercial Buildings	$104,000.00
Management Building	$ 53,000.00
Filling Station	$ 19,000.00
Garage Compounds	$ 32,000.00
Cameron Road property	$ 10,000.00
Store Fixtures and Equipment	$ 10,000.00
Office Fixtures and Equipment	$ 6,000.00
Residential Property contracted to sell	$3,080,662.64
Lots and Land	$ 192,563.02
Total	$3,507,225.66

When the Petitioner was negotiating with the Government, it had no funds to purchase any property. The project was being promoted principally by four residents of the community; namely — Russell, Stamm, Dillenberger and Vollman. Mr. Taft was their general counsel. After the purchase price was negotiated down from the appraised wholesale value of $4,252,275.00 to $3,510,800.00, the occupants of the residential properties were induced to personally put up $350,000.00 in cash representing 10% of the purchase price which had been agreed upon with the United States. In addition, these persons agreed to pay a balance on their homes secured by a mortgage on the property which totaled 90% of such purchase price. For this each purchaser would acquire title to the particular piece of residential property being purchased by him subject to a separate mortgage for the balance of the purchase price. The Petitioner acquired the title to all of the five categories of the property in the community except certain public facilities for the cash supplied by the residents for the downpayment and their commitment for the balance of the purchase price. Thus, the Petitioner ended up with the commercial property, the land ready for future development and raw land in addition to the Greenbelt. All of this additional property had a total valuation of $426,563.02 according to the company's own appraisal, yet the company did not pay one cent for it.

The evidence clearly shows that the Petitioner urged the adoption of the zoning ordinance to have it pass before final negotiations between Petitioner and the Public Housing Administration, so that the Petitioner could obtain a reduction in the purchase price by reason of the fact that the restrictions of the Hartzog zoning plan for the Greenbelt area would substantially lower its value. The former Mayor of Greenhills testified:

"Q And do you recall the statements that were made, or the report that was given by Mr. Stamm or Mr. Russell at that meeting to the people who were in attendance there?

"A I recall the general tone of the meeting, yes.

"Q Did that meeting follow the conference in Washington between the officers of GHOC and the officials of the Public Housing Administration concerning the purchase of the property?

"A Well, it followed one of the conferences, I would say, yes.

"Q Now, I will ask you whether or not you recall anything being stated at the meeting held at the request of the officers of Greenhills Home Owners Corporation in Greenhills with reference to the zoning ordinance?

"A Specifically, with reference to the zoning ordinance, I would have to say no.

"Q Do you recall anything being said with reference to the effect which the zoning ordinance would have on the value of the property in the Greenbelt area at that meeting?

"A Well, this was stated many times; that if the ordinance were adopted with the restrictive uses as far as the Greenbelt is concerned, that the price that could be negotiated by the corporation on behalf of the people who subsequently would repurchase their homes would be favorable to the people, to the corporation and reduce the purchase price. There is no question about that.

"Q You may state whether or not any of the officers of the Greenhills Home Owners Corporation made statements to this effect at the hearing, or hearings, of the Planning Commission before the ordinance was adopted.

"A Yes, this was a pretty generally accepted premise. * * *

"Q Did he (Mr. Stamm) give any reason as to why a consideration of the zoning ordinance by the Plan-

ning Commission be expedited in 1949, before its adoption?

"A Yes, because the adoption of this complete zoning ordinance would enable the corporation to negotiate more intelligently with the Home Finance Authorities and gain the Greenbelt provisions favorably on the purchase price." (R 461, 462)

Similar testimony is given by Mayor Geisen (R 434, 435, 436).

Having succeeded in persuading the Planning Commission to recommend that the City Council adopt the Hartzog zoning plan on August 2, 1949, the plaintiff then proceeded with its final negotiations with the Public Housing Administration. On August 11, 1949 only nine days after the adoption of the ordinance, Mr. Taft was negotiating in Washington and urging a substantial reduction in the purchase price because of the zoning ordinance. Mr. Taft kept detailed notes on these negotiations and testified with regard to the argument he made for the reduction of the purchase price for an amount equal to the appraised value of the Greenbelt, because of the 495 unimproved acres in the Village of Greenhills, 331 were zoned for Greenbelt purposes. Mr. Taft reported in his notes "we figure 164 acres only usable under the zoning ordinance." (R 872) Mr. Taft explains this in his testimony in some detail (R 852, 870-874). By using this device the Petitioner was able to induce the United States Government to reduce the purchase price by an amount of $299 for each acre zoned for Greenbelt purposes. This provided a total reduction in the purchase price of $98,969, which was rounded off to an even $100,000.

On October 18, 1948, Mr. Taft wrote a letter to the Division of Securities of Ohio in which he stated:

"We induced them to dedicate to the Village and School District certain public properties and to reduce the valuation on certain vacant property which, under the zoning ordinances of the Village, was not usable for any purpose which would enable us, as a buyer, to resell it. This left a new valuation of what — I guess we were buying — at approximately $3,937,000.00. Our exact offer is $3,511,300.00." (Taft, R 876)

Mr. Russell, President of Petitioner, agreed that the books of the corporation show a "negligible value" for the Greenbelt property, according to the records of 1956 (R 595). Mr. Harmeyer, the Petitioner's accountant, testified that the Petitioner's book value of the unimproved acreage in the Greenbelt property was $302.00 in 1957 (R 714).

Mr. Tucker, who had formerly been employed as the Greenhills representative of the Public Housing Administration, but severed that relationship in December 1948, was asked to participate with Mr. Russell and Mr. Stamm as a committee of three to negotiate the purchase price. This is reflected in the Minutes of the Ninth Meeting of the Board of Directors of the GHOC corporation on May 20, 1949. (R 292, 293) With regard to his participation in this negotiation, Mr. Tucker stated (R 271, 272):

"A Speaking only for myself, I personally discussed the implications of the Greenbelt zone, the use limitations, as a factor which should affect the Federal Government's appraisal of the land, and justify a reduction in the purchase price of the property.

"Q Now explain that to the Court, if you will, please.

"A Well, I, of course, was aware of the fact that the Village had adopted, or I assumed that it had been adopted at that time, the zoning ordinance which

severely restricted the use of the areas designated as Greenbelt, limited their uses to recreational and allotment gardens and other similar purposes, and I had the impression that part of the Federal Government's appraisal of the value of the property was the assignment of a rather substantial value of the vacant land zoned Greenbelt. And I thought it was appropriate to call the attention of the people in charge of the disposition of the property to the fact that this land had little economic value because of limitations imposed by the zoning ordinance on its use.

"Q You were then no longer connected with the Federal Government or the Village of Greenhills?

"A That is correct."

Mr. Russell, the President of the Petitioner, also admitted that "we undoubtedly tried to get the government to reduce their price because of the Greenbelt zoning ordinance. * * *" (R 620). This was after strenuous objection of Petitioner's counsel. (R 616-620)

The quotations from and references to the record in this argument shows that there was abundant foundation for the conclusion of the Supreme Court of Ohio as follows:

"The critical facts were never in dispute. GHOC did actively promote, as hereinbefore indicated, a comprehensive zoning ordinance over the course of a year and a half. During all of this time GHOC was the potential purchaser of substantially every square foot of land subject to that ordinance. GHOC did, in fact, purchase that land and GHOC thereby became the beneficiary of every good (neither the greatest nor the least of which was a reduction in the purchase price) and the endurer of every evil, if any, flowing from that ordinance."

This conclusion and the record upon which it is based make it abundantly clear that there is no constitutional or federal question in this case for this Court to review

and that this Court has no jurisdiction to review the judgment of the Supreme Court of Ohio which is based solely on the question of estoppel.

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APPENDIX A

Headley, Taft & Headley
Cincinnati 2, Ohio, April 4, 1949.

Hon. Paul H. Douglas,
Senate Office Building, Washington, D. C.

Dear Senator Douglas:

Thank you for your kind letter of April 1, and for all the courtesies which you have extended to us in the past.

Greenhills Home Owners Corp. was incorporated under the laws of Ohio, on March 2, 1948. The purposes for which the corporation is set up are as follows:

"The purpose or purposes for which this corporation is formed is to bid upon and purchase all the property as now owned by the United States Government, and known as Greenbelt Community, in Springfield Township, Hamilton County, Ohio; to sell and convey and deal in existing dwelling units and commercial and industrial property and acreage under proper restrictions, or to lease the dwelling units on a rental basis; to operate or lease the commercial establishments; to convey the streets, public buildings, and facilities to the village of Greenhills, without compensation, for public uses; to develop and promote the undeveloped building sites and commercial and industrial sites on such properties by constructing or causing to be constructed appropriate dwelling units, commercial buildings, and industrial plants, and selling, conveying, or leasing the same under appropriate restrictions; all in accordance with the principles of good land and village planning."

In addition to these purposes the corporation is given all the usual lengthy powers of the standard Delaware corporation authority.

The present articles provide for 2,300 shares classified into 1,000 shares of common, without par value (with the sales value fixed at $1 a share); 1,000 shares of noncumulative participating preferred shares, with a par value of $10; and 300 cumulative preferred shares, with a par value of $100. None of the $100 preferred has been issued. It is contemplated that it would be issued together with one share of common. This means that until working capital is sought by the sale of the $100 preferred, the corporation has been operating with 700 shares of common and 1,000 shares of participating preferred.

Of the participating preferred, between 450 and 460 shares have been sold for cash, and this money has been used for such current expenses, including my own compensation, as had to be paid in cash. Any of the 220-odd heads of families who have not purchased participating preferred shares, are of course eligible to do so at any time.

Of the 700 shares of common, 70 have been issued on the basis of $1 a share cash payment, but with the number of shares allocated on the basis of the right to buy one share for every $100 of work actually done.

The other provisions as to the stock will give the cumulative first preference and a dividend of 5 percent per annum. The participating $10 preferred is entitled to 5 percent per annum, not cumulative. After 5 percent is paid in any year on the $100 preferred and the $10 preferred, further dividends may be paid in equal amounts on the common shares and on the $10 preferred until $25,000 has been paid to the $10 preferred over and above the 5 percent on each share. Thereafter 1 percent of the remaining profits of the corporation goes to the $10 preferred. The $100 preferred is callable at any time for $105, plus accumulated dividends. The $10 preferred may be redeemed after January 1, 1958, at $12.50.

The amendment for which we have now enough proxies, and which will therefore be adopted at the meeting which has been called for next Tuesday, April 12, changes the provisions for dividing the profits between the $10 preferred and the common, so as to read as follows:

"When dividends of 5 percent have been paid in any calendar year on all the outstanding cumulative preferred shares and noncumulative participating preferred shares of said corporation, any further dividends from the profits and surplus of the corporation shall be paid upon the common shares and upon the participating shares in equal amounts to each class."

In addition to that we will adopt the following amendment:

"When the two classes of preferred shares shall have been redeemed, and when in the judgment of the board of directors the general purposes of the Greenbelt development at Greenhills have been accomplished and the corporation ought to be liquidated, if the assets of the corporation are more than $100 per common share outstanding, the board of directors shall create a nonprofit corporation, whose general purpose shall be the civic development of Greenhills, including such possible projects as the improvement of the schools, scholarships, support of a library, and aid for civic memorials, the board shall then convey to such nonprofit corporation all assets of the corporation in excess of $100 per common share outstanding, plus the necessary taxes and expenses of liquidation, including any taxes on the transaction payable by the common shareholders, and the board of directors and common shareholders and the board of directors and common shareholders shall then proceed to liquidate the corporation."

From this you will see that the changes make the corporation into a mutual company in which the eventual liquidation of the operation will pay out the common shareholders

for the work done on the same basis on which the common was issued, namely $100 per share. In the meantime, the profits are divided between the participating preferred and the common shareholders, which include over three-fifths of all the tenants and the farm tenants.

I trust this gives you a complete idea of the situation. I should perhaps add that this amendment was originally proposed in May 1948 and at two meetings during that month we attempted to get enough votes to pass it. Unfortunately we did not succeed until this week.

Sincerely yours,

/s/ CHARLES P. TAFT